

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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DANIEL G. MARTINEZ, et. al.,

Plaintiffs,

v.

PRLAP, Inc., et al.,

Defendants.

Case No. 2:12-cv-00345-MMD-RJJ

ORDER

[Plf.'s Motion to Voluntarily Dismiss
Without Prejudice – dkt. no. 9]

Before this Court is Plaintiff Daniel G. Martinez's Motion to Voluntarily Dismiss Without Prejudice. (Dkt. no. 9.)

I. BACKGROUND

Plaintiffs Daniel G. Martinez, Tina M. Courtney, and Thomas Zsidro filed this action in state court on October 14, 2011, against PRLAP, Inc. ("PRLAP"), the original trustee of the deed of trust, for breach of fiduciary duties arising out of the alleged filing of fraudulent documents with the county recorder relating to a property that had been the subject of foreclosure proceedings. The property was sold at a foreclosure sale on October 24, 2011. On January 31, 2012, Clark County District Judge Kenneth Corey granted PRLAP's Motion to Dismiss as to Plaintiffs Courtney and Zsidro. Martinez subsequently filed a First Amended Complaint on February 10, 2012, alleging claims against PRLAP, Inc., MTC Financial Inc. d/b/a Trustee Corps ("Trustee Corps") (the substituted trustee), and individual defendants Paul Kim, Juan Carrillo, Gloria Juarez,

1 Amy Lemus, Anthony Tran, Susan Dana, and Diane Derr. Trustee Corps removed this
2 action on March 1, 2012. On July 11, 2012, the Court denied Plaintiff Martinez's Motion
3 to Remand. (See dkt. no. 41.)

4 **II. DISCUSSION**

5 Pursuant to Fed. R. Civ. P. 41(a)(2), "an action may be dismissed at the plaintiff's
6 request only by court order, on terms that the court considers proper." The purpose of
7 Rule 41(a)(2) "is to permit a plaintiff to dismiss an action . . . so long as the defendant will
8 not be prejudiced or unfairly affected by dismissal." *Stevedoring Servs. of Am. v. Armilla*
9 *Intern. B. V.*, 889 F.2d 919, 921 (9th Cir. 1989) (internal quotations omitted). "[T]he
10 decision to grant a voluntary dismissal under Rule 41(a)(2) is addressed to the sound
11 discretion of the District Court." *Hamilton v. Firestone Tire & Rubber Co., Inc.*, 679 F.2d
12 143, 145 (9th Cir. 1982).

13 Martinez seeks to dismiss his suit against Trustee Corps, Paul Kim, Juan Carillo,
14 Gloria Juarez, Amy Lemus, and Anthony Tran. The Court finds that Martinez's request
15 will not unfairly prejudice these defendants. Martinez sought dismissal only days after
16 these Defendants filed their Answer to the Complaint and about two weeks after Trustee
17 Corps filed its petition for removal. Further, the Court will not award these defendants
18 attorneys' fees or costs.

19 The Court also notes that PRLAP's Motion to Dismiss in state court was granted
20 as to Plaintiffs Courtney and Zsidro on January 31, 2012. (See Dkt. no. 44-D.) Given
21 that Martinez, as a *pro se* litigant, was prohibited from pursuing claims on behalf of
22 Courtney and Zsidro in his First Amended Complaint, see *Simon v. Hartford Life, Inc.*,
23 546 F.3d 661, 664-65 (9th Cir. 2008), the only remaining litigants in this case are Plaintiff
24 Martinez and Defendants PRLAP, Dana, and Derr.


25 **III. CONCLUSION**

26 Accordingly, IT IS HEREBY ORDERED THAT Plaintiff Daniel G. Martinez's
27 Motion to Voluntarily Dismiss Without Prejudice (dkt. no. 9) is GRANTED.

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1 IT IS FURTHER ORDERED THAT the Office of the Clerk shall terminate Plaintiffs
2 Thomas Zsidro and Tina M. Courtney pursuant to PRLAP's Motion to Dismiss (see dkt.
3 no. 44-D).

4 ENTERED THIS 20th day of July 2012.

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7 UNITED STATES DISTRICT JUDGE
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